

**CAUSE NUMBER PD-0771-17**

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**IN THE TEXAS COURT OF CRIMINAL APPEALS**

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**JOHN CHAMBERS,**  
*Petitioner,*  
v.  
**THE STATE OF TEXAS,**  
*Respondent.*

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**On appeal from Cause No. 2015-DCR-268-D from the  
103rd Judicial District Court of Cameron County, Texas**

**Seeking review of the Thirteenth Court of Appeals'  
Judgment in Cause No. 13-16-00079-CR**

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**RESPONDENT'S BRIEF**

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## **STATEMENT OF FACTS**

The Statement of Facts is being presented in a semi-outline fashion to aid in understanding the issues.

### ***The Texas Commission on Law Enforcement***

#### **Organization**

The Texas Commission on Law Enforcement (herein, “TCOLE”) regulates law enforcement licensees. (10 R.R. at 43, 112). In order to better facilitate this mission TCOLE has two different types of investigators. It’s Enforcement Officers investigate criminal complaints and license-related issues. While its Field Agents audit law enforcement agencies and serve as the agencies’ liaisons (10 R.R. at 59). Both TCOLE sections enforce the Texas Occupations Code and Texas Administrative Code (10 R.R. at 95-6).

TCOLE requires a law enforcement agency which employs one or more peace officers (herein, “agency”) must keep certain specific records relating to its officers’ firearm qualifications (11 R.R. at 213). Note, “peace officer” is a person elected, employed, or appointed as a peace officer under the Occupations Code. (11 R.R. at 213). Furthermore, it is not necessary for a peace officer to have gainful employment to maintain his license; Unemployed peace officers may maintain their licenses via unpaid reservist appointments (10 R.R. at 85, 98).

## **Firearm Qualification Records**

TECOLE requires licensed peace officers to annually qualify with their respective service weapons. (10 R.R. at 48). Before an officer may be appointed, the appointing agency must verify the officer has qualified on his service weapon within the previous 12 months. *Id.* Further, TECOLE requires that when an officer separates from the particular agency, the agency must maintain the officer's hiring documents and firearm qualification records (herein, "FQRs") for the subsequent five-year period following their separation. (10 R.R. at 81-2); (11 R.R. at 229-30); (12 R.R. at 82).

## **Qualification**

TCOLE mandates licensee qualification in the type of firearm (semi-automatic vs. revolver) the particular individual carries. (12 R.R. at 95-8). Different firearms function in very different ways. *Id.* TCOLE's best practice is to have the individual officers bring their own respective service weapon(s) to the qualification range in consideration of the Administration Code's requirement that the Firearms Proficiency Officer (herein, "FPO") also conducts an inspection of the individuals' service weapon(s). (12 R.R. at 95-96); (10 R.R. at 69).

The Texas Administrative Code contains the required qualification course of fire (10 R.R. at 49). Training and qualification requirements are

standard for all officers, regardless of whether the officer is elected, appointed, or employed (12 R.R. at 81).

### **Recording the qualification**

TCOLE makes recommendations for best practices in recording firearm qualifications, but TCOLE does not distribute a standard firearm qualification record/form. (11 R.R. at 228). Agencies have discretion in the manner and means of recording their officers' firearm qualifications as long as the records are accessible during an audit. (10 R.R. at 48, 115).

Generally, each agency creates its own FQR manner and means. Such FQRs usually include each firearm's serial number. TCOLE advises the best practice is to record the firearm's serial number within the FQR because it memorializes the weapon on which the officer qualified (12 R.R. at 97-99). TCOLE however, does not maintain its licensees' FQRs (10 R.R. at 82). Instead, each agency is required to maintain, inter alia, its own officers' FQRs and upon separation from the agency it must retain the officer's FQRs for five years after the separation. (10 R.R. at 82, 114-115); (12 R.R. at 82)..



## **Purpose of the FQR**

An FQR becomes vital when an officer discharges his weapon. (12 R.R. at 81). On such occasion the Texas Rangers immediately examine the officer's FQR, as the FQR demonstrates the officer was qualified on his service weapon (10 R.R. at 50).

## **Audits**

Agencies must maintain records for its appointed officers. (10 R.R. at 81). If records are missing from an officer's file, that officer is "improperly appointed" and is therefore impersonating a police officer (10 R.R. at 131). TCOLE requires each agency's records be audited at least once every five years. (10 R.R. at 44). Audits are generally unannounced. (10 R.R. at 45).

The audit begins with the respective agency's officer list, which is accessible on the TCOLE website. (10 R.R. at 38, 45-46). Using the officer list, the Field Agent then ensures the agency's records are in order for each licensee appointed. (10 R.R. at 47). When auditing an agency, the Field Agent is specifically searching for the last date each officer at the agency qualified on his or her's firearm. (10 R.R. at 47-50). The Field Agent also reviews the agency's previous audits. (10 R.R. at 44-48).

Prior to the Field Agent's departure from the agency, deficiencies within the records are itemized in a working report – called the "preliminary

audit report” – and presented to the chief of the agency. (11 R.R. at 207). This preliminary audit report serves as a working document. (10 R.R. at 76-77).

Once the chief signs the preliminary audit report, the report is entered into the TCOLE database, and a digital report is generated. (11 R.R. at 207). A chief must remedy all deficiencies within his agency’s preliminary audit report within the deadline provided to him in the preliminary audit report: Seven days for FQR deficiencies; and 30 days generally (10 R.R. at 76-77); (12 R.R. at 86). After making the corrections the chief must execute a “certification form,” which the chief subsequently submits to TCOLE. (10 R.R. at 69-72).

A chief has various options when faced with deficiencies in his agency’s FQRs; easy and obvious options include physically going to the range and re-qualifying the officers with deficient records, or requesting such officer submit written documentation of their current qualification. (10 R.R. at 68); (12 R.R. at 90-93). Termination of an officer with deficient records would not remedy the agency’s record deficiencies; again, because the agency is required to maintain the officer’s corrected FQR for five years after his or her departure from the agency. (12 R.R. at 84).

When a chief certifies he has corrected deficiencies within his agency's preliminary audit report but in fact he has not, TCOLE Enforcement may investigate potential criminal activity. (11 R.R. at 90-91).

***Indian Lakes Police Department***

John Chambers served as Chief of Indian Lakes Police Department (herein, "ILPD"). (11 R.R. at 24). As chief, Chambers coordinated emergency management services, assisted the mayor, and attended city functions. (12 R.R. at 56). Chambers was also responsible for code enforcement. *Id.* Notably, Chambers also farmed and owned and operated small businesses, including a private security business. *Id.*

Chambers appointed Alfredo Avalos as an ILPD reservist in August 2014, and subsequently hired him as a paid ILPD officer. (11 R.R. at 22, 24). Additionally, Avalos also worked at Chambers' private security business. (12 R.R. at 13). Chambers and Avalos were the only paid officers at ILPD. (11 R.R. at 81). Chambers testified he took Avalos from being a bus driver to being a police officer. (12 R.R. at 38). Avalos testified Chambers habitually made questionable requests to insulate himself from criminal liability. (11 R.R. at 49).

ILPD employed approximately 28 licensed peace officers as unpaid reservists (10 R.R. at 130). At ILPD, the only distinction between appointed

reservists and employed peace officers is the latter are paid, the former are not (11 R.R. at 128). The reservists maintained active peace officer licenses. Chambers appointed many of these reservists in order to help them maintain their respective peace officer licenses. (10 R.R. at 35, 84-85); (12 R.R. at 25).

TCOLE Field Agent Derry Minor audits agencies' records and assists chiefs and administrators in record maintenance. Minor was assigned to serve as Chambers' TCOLE liaison in 2012. (10 R.R. at 44-88). In 2013, Minor conducted TCOLE's first recorded audit of ILPD. (10 R.R. at 52). The audit revealed deficiencies, including missing files and essential documents missing from files (10 R.R. at 54-55). Minor counseled Chambers regarding his options for correcting the deficiencies. (10 R.R. at 54). Chambers was aware that if an officer's paperwork wasn't in order, that officer's appointment was improper. (12 R.R. at 24).

In early 2015, Palm Valley Police Department Chief of Police Alvaro Garcia learned ILPD was possibly falsifying documents to allow one of its officers to work security in a manner in violation of TCOLE policy. Chief Alvaro submitted a lengthy complaint to TCOLE. (10 R.R. at 25-39, 59-60, 126-127). TCOLE Enforcement Officer Hufstetler traveled to the agencies to investigate the complaint for criminal and administrative violations. (10 R.R.

at 112, 125-9). Hufstetler directed Minor audit ILPD's records while Hufstetler investigated Palm Valley's complaint. (10 R.R. at 61).

The audit occurred on January 13, 2015. (XI R.R. at 186.) Minor pulled ILPD's officer list from the TCOLE website; the list indicated ILPD employed approximately 30 officers. (10 R.R. at 67.) Minor asked Chambers to review the officers' current FQRs, but Chambers could not produce them. (11 R.R. at 186-187). While shuffling through paperwork searching for the missing records, Chambers reached into a box, pulled out a stack of paper, and then advised Minor he had found the missing records, and handed the stack of paper to Minor. (11 R.R. at 186-187, 190).

Within the documents handed to Minor were FQRs from the 2013 audit and partially-blank FQR forms, which were already executed by the firearm instructor. (11 R.R. at 190-191). See also (11 R.R. at 25-26); (12 R.R. at 41). Minor advised Chambers the partially-blank FQR forms were not acceptable and ordered him to not do it again. (11 R.R. at 190-1). The audit also revealed eight FQR-related deficiencies. (11 R.R. at 206-207).

Minor reviewed the preliminary audit report with Chambers. (11 R.R. at 209); (10 R.R. at 75). Minor advised Chambers the FQRs needed to be corrected, and Chambers said he understood. (11 R.R. at 209). Minor also advised him the FQR deficiencies had to be remedied by January 23, 2015.

(11 R.R. at 191, 195); (10 R.R. at 70). Chambers had until February 13, 2015, to correct the balance of the deficiencies. (10 R.R. at 69).

Based on Chambers' history of directing Avalos to do questionable things so as to maintain his own deniability, Avalos anticipated Chambers would force Avalos to do something nefarious about the missing FQRs. (XI R.R. at 49.) Avalos called Hufstetler, who advised Avalos to follow Chambers' instructions regarding the FQRs. (10 R.R. at 133-5).

On or about January 20, 2015, Chambers procured and presented to Avalos an Indian Lakes Police Department list of officers and whited-out firearm qualifications forms. (11 R.R. at 38, 46). The forms were Xerox copies of the ILPD standard FQR form (12 R.R. at 59), except some items were already filled out, including Chambers' signature and the rangemaster's signature. (12 R.R. at 47-48, 57). Chambers directed Avalos, using the ILPD officer list, to complete the FQRs. (11 R.R. at 45). All that was left to be filled out was the officer name, the date, the weapon brand, model, and serial number. (11 R.R. at 41). Chambers testified he told Avalos to "just use" the details of Chambers' own firearm in the FQR. (12 R.R. at 19). See also (11 R.R. at 38-39). Chambers' son, who was present during the 2015 audit (11 R.R. at 187), sent the serial number of Chambers' firearm to Avalos. (12 R.R. at 42); (11 R.R. at 39).

Chambers then instructed Avalos to use September 20, 2014, as the qualification date, as a firearm qualification course did, in fact, occur on that date. (11 R.R. at 38); (11 R.R. at 55-56). Avalos attended the September 20th qualification. (11 R.R. at 232-3). Chambers did not. (12 R.R. at 52-4). Some of the officers whose FQRs are at issue in the indictment were not in attendance that day. (11 R.R. at 104); (11 R.R. at 116); (11 R.R. at 123); (11 R.R. at 130); (11 R.R. at 141); (11 R.R. at 158); (11 R.R. at 171-2). In addition, the reservists testified they did not qualify on the weapon reflected in their respective FQRs. (11 R.R. at 101-2, 111-2, 124, 130, 142, 165, 170-1, and at 182).

Chambers urged Avalos to complete the forms in order to submit them to TCOLE. (11 R.R. at 47). Avalos emailed the forms to Chambers, and Chambers immediately forwarded the email to Minor without reading it. (12 R.R. at 27, 41, 60-1 and at 89). Chambers noted the email contained 30-50 pages of attachments but did not review them because it was “not humanly possible.” (12 R.R. at 28). Upon reviewing the email attachments and discovering deficiencies, Minor transferred the records to the TCOLE enforcement division. (10 R.R. at 89-90).

On February 13, 2015, Chambers emailed Minor a notarized certification stating all of the deficiencies at ILPD had been corrected. (11

R.R. at 209-210). A transmission verification report and a copy of Minor's official typed audit report were attached to the email. (11 R.R. at 209). Avalos turned the ILPD FQRs into the Cameron County District Attorney. (11 R.R. at 29-30). On February 26, 2015, Chambers was arrested. (12 R.R. at 36).

## **ARGUMENT**

The record clearly established TCOLE was acting within the scope of its authority to regulate peace officer licensees and the FQRs are crucial for public safety, so Chambers' arguments fail.

### ***RELEVANT AUTHORITY***

#### **The Texas Penal Code**

The prohibition against tampering with government records is codified at Tex. Penal Code Ann. § 37.10 (West 2015). Except as otherwise provided, such offense is punishable as a state jail felony if "the actor's intent is to defraud or harm another." Tex. Penal Code Ann. § 37.10(c)(1) (West 2015).

"Government record" means, (A) anything belonging to, received by, or kept by government for information, including a court record, or (B) anything required by law to be kept by others for information of government. Tex. Penal Code Ann. §37.01(2)(A) and (B) (West 2015). It is a defense to prosecution that the "false entry or false information could have no effect on the government's purpose for requiring the government record." Tex. Penal Code Ann. § 37.10(f).



## **The Code of Criminal Procedure**

“Peace officer” is defined in Article 2.12 of the Texas Code of Criminal Procedure to include “marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code.” Tex. Code Crim. Proc. Ann. § 2.12(3) (West 2015). Notably, not all reserve municipal peace officers are peace officers under Article 2.12 of the Code of Criminal Procedure, but rather only *those who hold a permanent peace officer license* issued under Chapter 1701, Occupations Code. *Id.* This distinction is crucial. Herein, a reservist with a permanent peace officer license shall be referred to as a **“licensed reservist”** and a reservist without a permanent peace officer license (and therefore not a “peace officer” under T.C.C.P. Art. 2.12) shall be referred to as an **“unlicensed reservist.”** An unlicensed reservist is NOT a “peace officer” under T.C.C.P. Art. 2.12.

## **Texas Occupations Code**

The legislature grants TCOLE general powers and rule-making authority under Tex. Occ. Code Ann. § 1701.151 (West 2015). This includes the establishment of “minimum standards relating to competence and reliability” for licensing of officers, and requiring entities employing officers to submit reports and information. Tex. Occ. Code Ann. § 1701.151(2) and

(4). Specifically, the legislature charges TCOLE “by rule shall define weapons proficiency.” Tex. Occ. Code Ann. § 1701.355(c).

Different types of officers are addressed in Chapter 1701 of the Occupation Code.

Chapter 1701 defines a “peace officer” as “a person elected, employed, or appointed as a peace officer under Article 2.12 of the Code of Criminal Procedure, or other law.” 1701.001(4).

An unlicensed reservist who does not meet the “peace officer” definition of T.C.C.P. Art. 2.12 also does not meet the “peace officer” definition of 1701.001(4). Recall a *licensed* reservist is a “peace officer” under T.C.C.P. Art. 2.12 but an *unlicensed* reservist is not. Thus, a person “elected, employed, or appointed” as a *licensed* reservist would meet the 1701 definition of “peace officer,” but a person “elected, employed, or appointed” as an *unlicensed* reservist would not.

This distinction is underscored by the legislature’s definition of “reserve law enforcement officer.” A “reserve law enforcement officer” under Chapter 1701 means “a person designated as a reserve law enforcement officer under Section 85.004, 86.012, or 341.012 of the Local Government Code, or Section 60.0775 of the Water Code.” 1701.001(6). Local

Government Code 341.012 forms the basis of Chambers' request for relief and is discussed at length *infra*.

In defining which agencies would be subject to this mandate, the Texas Legislature specifies the mandate applies to agencies which ***employ*** one or more peace officers. Stated otherwise, the 1701.355(a) mandate applies to agencies which make use of, advantageously use, or engage the services of one or more peace officers.

Recall under 1701, "peace officer" means "a person elected, employed, or appointed as a peace officer under T.C.C.P. Article 2.12." Also recall under TCCP Art. 2.12, a peace officer includes "police officers of an incorporated city... and ***those reserve*** municipal peace officers ***who hold a permanent peace officer license*** issued under Chapter 1701, Occupations Code." Reading these provisions together, 1701.355 requires an agency which utilizes at least one licensed peace officer – regardless of whether that licensed peace officer is a paid employee, elected official, or an appointed reservist – to ensure that all of the agency's peace officers are proficient with their service weapons and that records of same are maintained.

**TCOLE has authority over licensed peace officers.**

Chambers' complaint at TCOLE's "presupposition that all officers under its jurisdiction will be licensed peace officers" (Petitioner's Brief, p. 13) underscores that his confused arguments are based on a misunderstanding of the facts.

While Chambers does in fact acknowledge that Chapter 1701 distinguishes between different types of officers, he neglects to appreciate the sole factor which determines which category an officer falls into: his status as a licensed peace officer. If the officer does not hold a peace officer license and is instead "designated" as a reservist under a different statute – such as Local Gov 341.012 – then the officer is a "reserve law enforcement officer." 1701.001(6). If the officer holds a peace officer license, he is a "peace officer" under 1701 regardless of his status as an employee, elected official, or appointed volunteer. 1701.001(4).

The ILPD reserve force falls into this second category. The officers – though appointed and unpaid – held permanent peace officer licenses, and may in fact have only served with ILPD to maintain that license. Notably, Chapter 1701 expressly states it does not affect a certain chapter of the Local Government Code, but that provision is silent regarding 341.012. 1701.003(a). Additionally, Chapter 1701 addresses employing agencies

authority to establish hiring and training qualifications in 1701.003(c), which prohibits agencies from establishing standards below TCOLE's minimum standards. 1701.003(c).

Every word of a statute is presumed to have been used for a purpose, and every word excluded is presumed to have been excluded for a purpose. *Shear v. State*, 2014 WL 1882757 at \*2 (Tex. App. – Waco, no pet.); *In Interest of C.J.N.-S.*, 540 S.W.3d 589 (Tex. 2018) (“Courts are to ...[accept] that lawmaker-authors chose their words carefully, both in what they included and in what they excluded.”). Courts presume the Legislature purposefully omit words not chosen. *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). The Legislature's disagreement with Chambers analysis is evident by the provisions with 1701.003.

TCOLE has authority to regulate licensed peace officers. The jury heard individual ILPD reservists state they have their respective peace officer licenses.. The jury also heard Chambers testify that the ILPD reserve force was comprised of licensed peace officers, and the only reason Chambers appointed them to the force was to help them maintain their licenses. (12 R.R. at 25.).

Because TCOLE was acting within the scope of its authority by requiring ILPD to maintain FQRs for licensed peace officers appointed as ILPD reservists, a rational juror could have found the essential elements of the offense of tampering with a government record beyond a reasonable doubt.

**Public safety is an important purpose.**

Chambers' arguments depend upon FQRs being "completely meaningless and required by TCOLE in contravention of [its] statutorily authorized authority." See, (Petitioner's Brief, p. 21). The State contends maintaining and recording licensed peace officers' firearms qualifications is fundamental to the fulfillment of TCOLE's purpose: public safety.

**STATE'S RESPONSE TO CHAMBERS FIRST ISSUE:**

Chambers' first allegation on review is the appellate court erred in its legal sufficiency analysis of (1) whether the FQRs constituted a "government record," (2) the State's obligation in relation to PC 37.10(f), and (3) legal impossibility.<sup>1</sup>

When addressing a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Febus v. State*,

542 S.W.3d 568, 572 (Tex. Crim. App. 2018) (citing *Crabtree v. State*, 389 S.W.3d 820, 824 (Tex. Crim. App. 2012) (citation omitted)).

**“Government record” and legal impossibility<sup>1</sup>**

Chambers alleges the appellate court took no time to address the “for information of government” in PC 37.01. Petitioner’s Brief, p. 17.

According to Chambers,

“The [“tampering with a government record”] statute must refer to records that have a legal reason or at the very least serve some purpose toward the duties of government. Tex. Penal Code 37.01; Tex. Penal Code 37.10(f).”

Petitioner’s Brief, p. 17 (internal citation omitted).

Using this standard, Chambers argues, the FQRs at issue are not “government records” because they are neither required by law to be kept nor kept for government purposes, thus rendering it legally impossible for him to be guilty of tampering with government records. (Petitioner’s Brief, p. 18-19, 21).

PC 37.01(2) provides multiple definitions of “government record,” including (A) anything belonging to, received by, or kept by government for information, including a court record, or (B) anything required by law to be

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<sup>1</sup> This Court should not entertain Chambers’ “legal impossibility” argument, as it is the first time he raises the issue.

kept by others for information of government. Both definition (A) and (B) of “government record” were submitted to the jury.

The jury heard testimony FQRs are required to be maintained by each respective agency<sup>2</sup> and testimony the FQRs were received by TCOLE<sup>3</sup> from Chambers.

A rational juror could have found the FQRs were belonging to, received by, or kept by government for information, so it’s possible the jury found the essential elements of the offense were met using only the (A) definition of “government record,” thus rendering moot any analysis of the second definition by the appellate court.

Chambers’ assertion the “government record” definition can only refer to “records that have a legal reason or at least serve some purpose toward the duties of government” is based on his confusion of the “government record” definition in 37.01 with the safety-valve defense laid out in 37.10(f). PC 37.10(f) provides a defense to prosecution for tampering with a government record if the “false entry or false information could have no effect on the government’s purpose for requiring the government record.” PC 37.10(f). Cf 37.10(e).

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<sup>2</sup> See, e.g., (10 R.R. at 81-2, 114-5); (11 R.R. at 229-230.) (12 R.R. at 82.).

<sup>3</sup> See, e.g., (10 R.R. at 89.) (XI R.R. at 196-201) (12 R.R. at 27, 41, 60-1.)



Chambers asserts “[a]t trial, it was necessary for the State to disprove the statutory defense that ‘the false entry or false information could have no effect on the government’s purpose for having the government record.’ Tex. Penal Code 37.10(f) Petitioner’s Brief, p. 20.

Chambers’ claim is without basis and seems to result from his confusing 37.10(f) with the definitions of “government record” at 37.01. The charge presented to the jury included the 37.10(f) defense, which the State disproved at trial.<sup>4</sup>

Nevertheless, assuming *arguendo* Chambers’ standard was in fact the proper standard, a rational juror could still have found all the essential elements of the offense beyond a reasonable doubt based on the extensive testimony regarding the importance of maintaining the FQRs.

#### **STATE’S RESPONSE TO CHAMBERS SECOND ISSUE:**

Chambers continues employing his unique definition of “government record” in his allegation the Thirteenth Court of Appeals failed to fully address his arguments in violation of TRAP 47.1. Reviewing courts decline to consider factual scenarios different than the one presented. See, e.g., *Hardin v. Obstetrical & Gynecological Associates P.A.*, 527 S.W.3d 424, 440 n.24

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<sup>4</sup> The firearm an officer uses to qualify is identified by documenting the firearm’s serial number. (XII R.R. at 97-99). When an officer discharges his firearm, Texas Rangers examine his FQR. (10 R.R. at 50). FQRs are maintained for civil liability. (10 R.R. at 50). An officer’s appointment is improper – thus meaning he is actually impersonating a police officer – if records are missing from the officer’s file. (10 R.R. at 131).

(Tex. App.—Houston [1st Dist.] 2017, pet. filed). Such courts are called upon to decide the legal issues actually presented and limit themselves to that task. *Id.* (citing *Tex. Ass'n of Business v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993)).

The cardinal principle of judicial restraint—if it is not necessary to decide more, and we contend it is necessary not to decide more—counsels courts to exercise restraint when deciding cases. *In re S.N.*, 272 S.W.3d 45, 60 (Tex. App.—Waco 2008, no pet.) (citing *VanDevender v. Woods*, 222 S.W.3d 430, 433 (Tex. 2007) (citation omitted)).

The appellate court applied the proper definition of “government record” in its analysis; because a rational juror could have found the essential elements of the offense were met using only the definition of “government record,” any additional analysis of the term would be moot.

#### **STATE’S RESPONSE TO CHAMBERS THIRD ISSUE:**

In his third issue on review, Chambers alleges the Thirteenth Court of Appeals erred in upholding the trial court’s denial of Chambers’ request to include Tex. Local Gov. Code 341.012 in the jury charge. (Petitioner’s Brief, p. 26).

Chambers alleges the requested instruction would have informed the jury that under 341.012, the reservists were not subject to TCOLE regulation,

so those reservists' FQRs could not be government records. *Id.* Chambers asserts the appellate court's decision is misleading, confusing, and in conflict with established precedent.

Appellate review of claims of jury-charge error involves a determination of whether the charge is erroneous, and if it is, a harm analysis is applied. *Celis*, 416 S.W.3d at 423 (citing *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012)). In examining the charge for possible error, reviewing courts must examine the charge as a whole instead of a series of isolated and unrelated statements. *Vasquez v. State*, 389 S.W.3d 361, 366 (Tex. Crim. App. 2012).

The purpose of the trial judge's jury charge is to instruct the jurors on all of the law applicable to the case. *Vasquez v. State*, 389 S.W.3d 361, 366 (Tex. Crim. App. 2012). It is not the function of the charge merely to avoid misleading or confusing the jury: it is the function of the charge to lead and to prevent confusion. *Reeves v. State*, 420 S.W.3d 812, 818 (Tex. Crim. App. 2013) (citation omitted).

The ILPD reservists were licensed peace officers, thus rendering them subject to the authority of TCOLE. An instruction regarding an inapplicable statute would only serve to mislead and confuse the jury. Because it was not

error to exclude Local Gov 341.012 in the jury charge, no harm analysis is necessary.

Nevertheless, if this court were to find the instruction should in fact have been submitted to the jury, Chambers suffered no harm from the error because the jury could have relied on the (A) prong of the “government record” definition to find Chambers guilty of the offense.

**STATE’S RESPONSE TO CHAMBERS FOURTH ISSUE:**

Finally, Chambers alleges because the appellate court refused to analyze whether TCOLE has authority to regulate the ILPD reservists as a matter of law, the court erred in its analysis of the “intent to defraud” enhancement. (Petitioner’s Brief, p. 30-1). As explained *supra*, TCOLE has authority to regulate licensed peace officers, and the ILPD reservists were licensed peace officers.

Respectfully Submitted,

**LUIS V. SAENZ**

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## **CERTIFICATE OF SERVICE**

I certify that on Wednesday, May 23, 2018, a copy of the foregoing Respondent's Brief on the Merits was served to the following attorneys of record for Petitioner John Chambers via electronic mail.

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this document contains approximately 4,696 words in the portions of the document that are subject to the word limits of Rule 9.4(i) of the Texas Rules of Appellate Procedure, as measured by counsel's word-processing software. Consequently, the undersigned will also be contemporaneously filing a motion for permission to exceed the limits of TRAP 9.4(i).

/s/ Samuel B. Katz

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Samuel B. Katz